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Attorneys for Defendant

COUNTY OF KAUA‘I -

DEPARTMENT OF WATER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

Paul Allen Garcia, Kirah-Shantel

Garcia, Keane Bobby Braun,

Plaintiffs,

vs.

STATE OF HAWAII; JUDGE

KATHLEEN WATANABE;

JONATHAN J. CHUN; LORNA A.

NISHIMITSU; BELLES GRAHAM

LLP; PETER T. STONE; DAISY

LYNN B. HARTSFIELD; ANYA M.

PEREZ; JENNY J.N.A. NAKAMOTO;

SUN YOUNG PARK; ROBIN LYN

MILLER; STEPHEN J. TRIMBLE;

KEONE WAYNE SOUZA; TMLF

HAWAII LLLC; PENNYMAC CORP.;

GARY VICTOR DUBIN DUBIN

LAW FIRM; KEN OHARA; DAVID

) CIVIL NO. 22-00432 JMS-KJM

)

)

) DEFENDANT COUNTY OF

) KAUA‘I – DEPARTMENT OF

) WATER’S REPLY TO

) PLAINTIFFS REPLY TO

) DEFENDANTS FIDELITY

) NATIONAL TITLE INSURANCE

) COMPANY AND TITLE

) GUARANTY OF HAWAII, LLC

) MOTION TO DISMISS; COUNTY

) OF KAUA‘I MOTION TO

) DISMISS; ASSOCIATION OF

) APARTMENT OWNERS OF

) KAWAIKINI ESTATES AND

) SAIVA SIDDHANTHA JOINDER;

) SN SERVICING CORPORATION’S

) JOINDER; KEN OHARA, DAVID

) MCALLISTER, ZACHARY K.

MCALLISTER; DANIEL ALAN)	KONDO, ALDRIDGE PITE, LLP'S
ROSS; ZACHARY K. KONDO;)	JOINDER; TMLF HAWAII LLC,
ALDRIDGE PITE LLP; HILL)	PETER T. STONE, JENNY J.N.A.
WALLACK LLP; SN SERVICING)	NAKAMOTO, SUN YOUNG
CORP.; ERIC A. BRAUN; 1900)	PARK, ROBIN LYN MILLER,
CAPITAL TRUST III BY US BANK)	STEPHEN J. TRIMBLE, JASON
TRUST NATIONAL ASSOCIATION,)	COTTON, ESQ., THE MORTGAGE
NOT IN ITS INDIVIDUAL)	LAW FIRM JOINDER;
CAPACITY BUT SOLELY AS)	CERTIFICATE OF SERVICE
CERTIFICATE TRUSTEE;)	
ASSOCIATION OF APARTMENT)	
OWNERS OF KAWAIKINI)	
ESTATES; ASSET ACCEPTANCE;)	
CAPITAL ONE N.A., TITLE)	
GUARANTY OF HAWAII;)	
HONOLULU INFORMATION)	
SERVICE, INC. DBA HONINFO,)	
FIDELITY NATIONAL TITLE)	
INSURANCE COMPANY; BROOKS)	
R. BRAUN; ROBERT L. SOARES)	
JR.; DEREK W.C. WONG, LLC,)	
COUNTY OF KAUAI-)	
DEPARTMENT OF WATER,)	
)	
Defendants.)	
)	

**DEFENDANT COUNTY OF KAUA'I – DEPARTMENT OF
WATER'S REPLY TO PLAINTIFFS REPLY TO DEFENDANTS
FIDELITY NATIONAL TITLE INSURANCE COMPANY AND
TITLE GUARANTY OF HAWAII, LLC MOTION TO DISMISS;
COUNTY OF KAUA'I MOTION TO DISMISS; ASSOCIATION OF
APARTMENT OWNERS OF KAWAIKINI ESTATES AND SAIVA
SIDDHANTHA JOINDER; SN SERVICING CORPORATION'S
JOINDER; KEN OHARA, DAVID MCALLISTER, ZACHARY K.
KONDO, ALDRIDGE PITE, LLP'S JOINDER; TMLF HAWAII LLC,
PETER T. STONE, JENNY J.N.A. NAKAMOTO, SUN YOUNG
PARK, ROBIN LYN MILLER, STEPHEN J. TRIMBLE, JASON
COTTON, ESQ., THE MORTGAGE LAW FIRM JOINDER**

Defendant County of Kaua‘i - Department of Water (“County”), hereby files its Reply to Plaintiffs Reply to Defendants Fidelity National Title Insurance Company and Title Guaranty of Hawaii, LLC Motion to Dismiss; County of Kaua‘i Motion to Dismiss; Association of Apartment Owners of Kawaikini Estates and Saiva Siddhantha Joinder; SN Servicing Corporation’s Joinder; Ken Ohara, David Mcallister, Zachary K. Kondo, Aldridge Pite, LLP’s Joinder; TMLF Hawaii LLC, Peter T. Stone, Jenny J.N.A. Nakamoto, Sun Young Park, Robin Lyn Miller, Stephen J. Trimble, Jason Cotton, Esq., The Mortgage Law Firm Joinder (“Opposition”).¹ ECF No. 94.

In the County’s Motion to Dismiss Amended Complaint filed March 14, 2023 (“Motion”), ECF No. 86, the County argued that Plaintiffs’ second amended complaint (“SAC”), ECF No. 18, should be dismissed for violating FRCP Rule 8, failing to allege sufficient facts to state a plausible claim against the County, and—specifically with respect to any Section 1983 claims—failing to sufficiently allege an official policy, custom, or deliberate indifference. ECF No. 86 at PageID # 596-601. Plaintiffs’ Opposition makes no mention whatsoever of the County’s

¹ Though denominated as a reply brief, in substance ECF No. 94 appears to be an opposition brief directed at various defendants’ motions to dismiss. The County further notes that the Opposition is signed only by Plaintiffs Paul A. Garcia and Kirah-Shantel Garcia, and not by named Plaintiff Keane Bobby Braun. ECF No. 94 at PageID # 999. “Every pleading, written motion, and other paper must be signed . . . by a party personally if the party is unrepresented.” Rule 11(a) of the Federal Rules of Civil Procedure (“FRCP”).

specific arguments. Rather, the Opposition only specifically mentions “Fidelity and TDH”. ECF No. 94 at PageID # 998.

Plaintiffs vaguely contend, without citing any legal authority, that “[i]t may later prove true that the Defendants were not involved[,], however[,], until that time comes it should be presumed that the Defendants are involved.” Id. Plaintiffs misunderstand the pleading standard. They cannot simply presume involvement on the part of the County. Rather, the SAC must be dismissed because it fails to allege “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

For the above reasons, the County requests that this Honorable Court dismiss the SAC.

DATED: Līhu‘e, Kaua‘i, Hawai‘i, May 31, 2023.

MATTHEW M. BRACKEN
County Attorney

By /s/ Andrew S. Michaels
ANDREW S. MICHAELS

Attorneys for Defendant
COUNTY OF KAUA‘I -
DEPARTMENT OF WATER